

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
DOUGLAS AND BARBARA GRAHAM	:	DETERMINATION
	:	DTA NO. 818123
for Redetermination of Deficiencies or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for Years 1995 and 1996.	:	

Petitioners, Douglas and Barbara Graham, 3272 Murdock Avenue, Oceanside, New York 11572, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1995 and 1996.

A small claims hearing was held before Arthur Johnson, Presiding Officer, at the offices of the Division of Tax Appeals, 175 Fulton Avenue, Hempstead, New York, on September 11, 2001 at 9:15 A.M., with additional evidence to be submitted by December 11, 2001. Petitioners appeared by John T. Roesch, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Fred Havenbrook).

ISSUE

Whether petitioners presented sufficient evidence to adequately substantiate their claimed itemized deductions for taxes, contributions and job and miscellaneous expenses.

FINDINGS OF FACT

1. Petitioners, Douglas and Barbara Graham, timely filed joint New York State resident income tax returns for the 1995 and 1996 tax years reporting thereon New York adjusted gross

income of \$89,553.00 and \$114,833.00, respectively. The returns also reported New York itemized deductions of \$22,959.00 for 1995 and \$20,289.00 for 1996.

2. The Division of Taxation (“Division”) corresponded with petitioners requesting that they submit documentation to verify the itemized deductions claimed on their tax returns for the years 1995 and 1996. After reviewing the documents submitted by petitioners’ representative on May 11, 1998 and June 30, 1998, the Division concluded that they failed to adequately substantiate a portion of the claimed itemized deductions for taxes and all of the claimed itemized deductions for contributions and job and other miscellaneous expenses. Accordingly, the Division disallowed the aforementioned itemized deductions as unsubstantiated and on August 31, 1998, it issued to petitioners two notices of deficiency, one for each year at issue. The Notice of Deficiency for 1995 reduced petitioners’ itemized deductions from the \$22,959.00 claimed on the return to the verified amount of \$12,734.00 and asserted additional New York State tax due of \$777.63, plus penalty and interest. For the 1996 tax year, the Notice of Deficiency adjusted the claimed itemized deductions from \$20,289.00 to \$9,476.00. The Division allowed the standard deduction of \$12,350.00 in lieu of the adjusted itemized deductions and asserted a combined New York State tax due of \$565.65, plus penalty and interest. On both notices, the penalty was asserted pursuant to Tax Law § 685(b) for negligence.

3. Petitioners timely protested both notices of deficiency by filing a Request For Conciliation Conference with the Division’s Bureau of Conciliation and Mediation Services (“BCMS”). The controversy could not be resolved with BCMS and on August 18, 2000, it issued a Conciliation Order sustaining the notices of deficiency. Petitioners, in response to the Conciliation Order, filed a timely petition with the Division of Tax Appeals and this proceeding ensued.

4. The only item in dispute in this proceeding concerns the claimed deductions for contributions.

5. Petitioners submitted a letter dated November 4, 1999 on the letterhead of John T. Roesch which was signed by James Burton verifying that petitioners were parishioners of First Presbyterian Church in Oceanside during the years 1995 and 1996. Petitioners' representative requested that he be allowed 60 days to obtain documentation from the church as to the amounts contributed by petitioners for 1995 and 1996. The request was granted; however, no substantiation was submitted.

CONCLUSIONS OF LAW

A. Tax Law § 689(e) places the burden of proof on petitioners to show that the deficiencies issued to them are erroneous. In the instant matter, petitioners failed to sustain their burden of proof that they were entitled to any deductions for charitable contributions.

B. The petition of Douglas and Barbara Graham is denied and the two notices of deficiency issued August 31, 1998 are sustained, together with such additional penalties and interest as may be lawfully owing. Petitioners have made payments of \$1,560.00 towards the deficiencies.

DATED: Troy, New York
February 28, 2002

/s/ Arthur Johnson
PRESIDING OFFICER